IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 113 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA-WESTERN RAILWAY - Appellant(s)
Versus
SAURASHTRA CHEMICAL LIMITED, - Defendant(s)

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Appearance :
MR BIPIN I MEHTA for Appellant(s) : 1,
MS SAMTA PATEL FOR NANAVATI ASSOCIATES for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 31/07/2008

ORAL JUDGMENT

1. By consent of both the parties, this Second Appeal is taken up for final hearing.

2. I have heard Mr. Bipin I. Mehta, learned counsel for the appellant. I have also considered the resistance

placed by Ms. Samta Patel, learned counsel appearing for Nanavati Associates for the respondent.

3. I have considered both the judgments, that is, one of the trial court dated 30th November, 1987 passed by learned Joint Civil Judge [Junior Division] Porbandar in Regular Civil Suit No. 176 of 1985 and another judgment dated 8th January, 1990, passed by the learned Assistant Judge, District-Junagadh at Porbandar in Regular Civil Appeal No. 10 of 1988. The suit was filed for recovery of total sum with interest on account of loss sustained by the plaintiffs and on appreciation of evidence and facts placed by the parties, the learned trial judge decreed the suit. The first appellate court appreciated the evidence and the contents that were placed by the learned counsel appearing for the appellant and the respondent, and while hearing the First Appeal, dismissed the same. Thus, this is the case of two concurrent findings. Ultimately, the case placed by the plaintiff was based on facts and findings recorded by both the courts below are on facts. As such, no substantial question of law can be said to have involved in the matter. True it is that while admitting the appeal, this Court has framed question of law as involved in the appeal,

more particularly, in the background of grounds mentioned in the memo of the appeal.

4. On plain reading of both the judgments of the two courts below, this Court is of the view that there is no merit in the appeal and the question of law framed by this Court also revolves around the facts that were appreciated by both the courts below. There is no element of error in even appreciating the evidence. When loss of goods resulting into financial loss to the plaintiff was found proved, the defendant-railway administration is supposed to make that loss good. For short, there is no merit in the appeal and therefore, the appeal is dismissed.

5. According to Mr. Mehta, total decretal amount has been deposited by the railway administration in the trial court. Therefore, now the plaintiff can recover the decretal amount lying in the trial court. It will be open for the plaintiff to see that the amount deposited by the railway administration is in accordance with the decree passed. The appeal is dismissed.

[C.K. BUCH, J.]

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